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In the Supreme Court of the United States

OCTOBER TERM, 1957.

No. 850.

THE POMPEI WINERY, INC.,
Petitioner,

vs.

STATE OF OHIO BOARD OF LIQUOR CONTROL,
Respondent.

PETITION FOR REHEARING.

FRANK V. OPASKAR,
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STATE OF OHIO BOARD OF LIQUOR CONTROL,

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PETITION FOR REHEARING.

Petitioner respectfully prays it be granted a rehearing on its petition for writ of certiorari heretofore denied by this Court on or about April 28, 1958, and in support of its request for rehearing submits:

(a) That Section II of the Twenty First Amendment to the Constitution of the United States has no application in this case, and

(b) That the Due Process and Equal Protection of Law provisions of the Fourteenth Amendment are applicable and determinative of the issues in this cause, and

(c) That denial of the protection guaranteed by the Fourteenth Amendment to petitioner under the issues raised in this cause will tend to open the door to grave abuses, corruption and undermine public confidence in government.

ARGUMENT.

The decisions of this honorable court construing the purpose and coverage of Section II of the Twenty-First Amendment have properly limited the application of said amendment to the "transportation or importation of an alcoholic beverage into a state" and no more. A state may erect any barrier it chooses to the entry of any intoxicating liquor across the state line.

The instant case involves a "regulation" which discriminates against wine bottled and sold in Ohio. No question of transportation of wine into Ohio is raised. No question of importation of wine into Ohio is involved. The challenged regulation applies solely to wine sold in Ohio.

The Twenty-First Amendment, therefore, has no application and cannot properly be construed to have any application.

The control and regulation of all sales of wine in Ohio, however exercised under the police power of the State, must conform with the guarantees afforded under the Fourteenth Amendment in the same manner and to the same extent as any other commodity.

The Twenty-First Amendment which permits a State to control liquor traffic into its territory free from the restrictions of Inter-State Commerce clause has not abrogated or nullified the Fourteenth Amendment.

Neither is the right of the State of Ohio to estalish or fix minimum prices at which wine shall be sold within its borders questioned.

Petitioner does maintain that whatever minimum price is fixed it must afford equal protection under the law. There may not, under law, be one formula fixing the

minimum price at which wine may be sold in Ohio by a licensee selling wine bottled in Ohio, and a different method for licensee selling wine not bottled in Ohio. If permitted, such discrimination would grant an economic privilege to the favored licensee. Such an economic privilege becomes the means of destroying the unfavored licensee. Such has been the result of the challenged regulation.

By denying petitioner the protection guaranteed by the Fourteenth Amendment, the right to confer such economic privilege by governmental agency is confirmed and the door is opened to grave abuses, corruption and the undermining of public confidence in State government.

If, as is often maintained, that any traffic in alcoholic beverages has a capacity for evil, it would then seem crystal clear that conferring a privilege to one licensee not conferred upon another licensee would tend to compound the capacity for evil to public welfare. Where there are no privileges there can be no economic advantage, where there is no economic advantage there is no temptation.

The concept of American government is dedicated to abolish and prevent "privileges" not to grant them, and the Fourteenth Amendment is the means of its accomplishment.

For reasons stated above, rehearing on the Petition for Writ of Certiorari should be granted.

Respectfully submitted,

A. R. FIORETTE,
FRANK OPASKAR.

CERTIFICATE.

I, Frank V. Opaskar, one of the attorneys for The Pompei Winery, Inc., petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that the foregoing petition for rehearing is presented to the Court in good faith and not for any purpose of delay, and also certify that the petition is restricted to the grounds specified in Rule 58, subsection 2, of this Court.

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